

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELBA VEGA,

Plaintiff,

ANSWER

07-Civ.-9828 (BSJ)(GWG)

-against-

THE CITY OF NEW YORK, and THE NEW YORK
CITY DEPARTMENT OF PROBATION,

Defendants.

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Defendants, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their Answer to the complaint ("Complaint"), respectfully allege as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiff purports to proceed as set forth in this paragraph and respectfully refer the Court to the cited statutes for a complete and accurate statement of their contents.

2. Deny the allegations set forth in paragraph "2" of the Complaint, except admit that plaintiff purports to proceed as set forth in this paragraph and respectfully refer the Court to the cited statutes for a complete and accurate statement of their contents.

3. Deny the allegations set forth in paragraph "3" of the Complaint, except admit that plaintiff purports to set forth the basis of jurisdiction.

4. Deny the allegations set forth in paragraph "4" of the Complaint, except admit that plaintiff purports to set forth the basis of supplemental jurisdiction.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "5" of the Complaint, except admit that EEOC Charge

No. 520-2006-03067 was filed on plaintiff's behalf and respectfully refer the Court to that Charge for a complete and accurate statement of its contents.

6. Paragraph "6" of the Complaint constitutes legal argument for which no response is required. To the extent a response to this paragraph is required, defendants deny the allegations set forth in this paragraph, except admit that the City of New York ("City") is a municipal corporation, duly organized and existing under the Constitution and laws of the State of New York, and that more than 2,000 individuals are employed by the City.

7. Paragraph "7" of the Complaint constitutes legal argument for which no response is required. To the extent a response to this paragraph is required, defendants deny the allegations set forth in this paragraph, except admit that the New York City Department of Probation ("DOP") is an agency of the City.

8. Deny the allegations set forth in paragraph "8" of the Complaint, except admit that plaintiff purports to set forth the basis of venue.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the Complaint.

10. Deny the allegations set forth in paragraph "10" of the Complaint, except admit that the City is a municipal corporation, duly organized and existing under the Constitution and laws of the State of New York.

11. Deny the allegations set forth in paragraph "11" of the Complaint, except admit that the DOP is an agency of the City.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "12" of the Complaint, except admit that plaintiff is an adult female.

13. Deny the allegations set forth in paragraph "13" of the Complaint, except admit that plaintiff commenced employment with the City in July, 1986, when she was appointed to the provisional title of Probation Officer at the DOP.

14. Deny the allegations set forth in paragraph "14" of the Complaint.

15. Deny the allegations set forth in paragraph "15" of the Complaint, except admit that in March, 2006 plaintiff was reassigned from one unit to another within the DOP.

16. Deny the allegations set forth in paragraph "16" of the Complaint.

17. Deny the allegations set forth in paragraph "17" of the Complaint.

18. Deny the allegations set forth in paragraph "18" of the Complaint.

19. Deny the allegations set forth in paragraph "19" of the Complaint.

20. Deny the allegations set forth in paragraph "20" of the Complaint.

21. Deny the allegations set forth in paragraph "21" of the Complaint.

22. Deny the allegations set forth in paragraph "22" of the Complaint.

23. Deny the allegations set forth in paragraph "23" of the Complaint.

24. Deny the allegations set forth in paragraph "24" of the Complaint.

25. Deny the allegations set forth in paragraph "25" of the Complaint.

26. In response to the allegations set forth in paragraph "26" of the Complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through "25" as if fully set forth here.

27. Paragraph "27" of the Complaint constitutes legal argument for which no response is required. To the extent a response to this paragraph is required, defendants deny the allegations set forth in this paragraph, except admit that plaintiff is a female individual and

respectfully refer the Court to the cited statutes for a complete and accurate statement of their contents.

28. Deny the allegations set forth in paragraph "28" of the Complaint, except deny knowledge or information sufficient to form a belief as to what plaintiff believes.

29. Deny the allegations set forth in paragraph "29" of the Complaint.

30. Deny the allegations set forth in paragraph "30" of the Complaint.

31. Deny the allegations set forth in paragraph "31" of the Complaint.

32. In response to the allegations set forth in paragraph "32" of the Complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through "31" as if fully set forth here.

33. Paragraph "33" of the Complaint constitutes legal argument for which no response is required. To the extent a response to this paragraph is required, defendants deny the allegations set forth in this paragraph, except admit that plaintiff is a female individual and respectfully refer the Court to the cited "New York State Law" for a complete and accurate statement of their contents.

34. Deny the allegations set forth in paragraph "34" of the Complaint.

35. Deny the allegations set forth in paragraph "35" of the Complaint.

36. In response to the allegations set forth in paragraph "36" of the Complaint, defendants repeat and reallege the responses set forth in paragraphs "1" through "35" as if fully set forth here.

37. Paragraph "37" of the Complaint constitutes legal argument for which no response is required. To the extent a response to this paragraph is required, defendants deny the allegations set forth in this paragraph, except admit that plaintiff is a female individual and

respectfully refer the Court to the cited "New York City Human Rights Law" for a complete and accurate statement of its contents.

38. Deny the allegations set forth in paragraph "38" of the Complaint.

39. Deny the allegations set forth in paragraph "39" of the Complaint.

40. Deny the allegations set forth in paragraph "40" of the Complaint.

AS AND FOR A FIRST DEFENSE:

41. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE:

42. The Court lacks subject matter jurisdiction, in whole or in part, over the Complaint.

AS AND FOR A THIRD DEFENSE:

43. The Complaint is barred, in whole or in part, by the failure to perform all conditions precedent to suit or to exhaust all administrative remedies or both.

AS AND FOR A FOURTH DEFENSE:

44. The Complaint is barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A FIFTH DEFENSE:

45. An agency of the City of New York is not a suable entity and, thus, the DOP must be dismissed from this case.

AS AND FOR A SIXTH DEFENSE:

46. Any damage claims contained in the Complaint are barred, in whole or in part, by the failure to mitigate damages. Any damages sustained by plaintiff were caused by plaintiff's own negligent or culpable conduct.

AS AND FOR A SEVENTH DEFENSE:

47. Defendants exercised reasonable care to prevent and promptly eliminate any harassing behavior based on plaintiff's protected status or protected activity.

AS AND FOR A EIGHTH DEFENSE:

48. To the extent plaintiff asserts that defendant(s) are plaintiff's employer(s), defendants did not have knowledge of the alleged actions or inactions by individual employees in the DOP, nor was it reasonable for defendants to have had such knowledge.

AS AND FOR A NINTH DEFENSE:

49. Defendants could not have exercised reasonable care to prevent and correct promptly any of the actions or inactions about which plaintiff complains.

AS AND FOR A TENTH DEFENSE:

50. To the extent plaintiff asserts that defendant(s) are plaintiff's employer(s), plaintiff unreasonably failed to take advantage of preventative or corrective opportunities provided by defendants to their employees or to otherwise avoid harm.

AS AND FOR A ELEVENTH DEFENSE:

51. Defendants are not liable under cases such as Faragher v. Boca Raton, 524 U.S. 775 (1998), and Burlington Industries v. Ellerth, 524 U.S. 742 (1998).

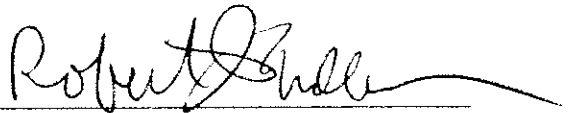
WHEREFORE, defendants respectfully request judgment dismissing the Complaint and denying all relief requested therein, entering judgment for defendants, and granting defendants costs, fees, and disbursements together with such other and further relief as

the Court deems just and proper.

Dated: New York, New York
February 12, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
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By:



Robert J. Anderson
Assistant Corporation Counsel

To: **LEE NUWESRA**
Attorney for Plaintiff
60 East 42nd Street, Suite 838
New York, New York 10017
(212) 682-0655

CERTIFICATE OF SERVICE

I, **ROBERT J. ANDERSON**, hereby certify that, on February 12, 2008, I caused a true and correct copy of the foregoing **ANSWER** to the Complaint to be served upon plaintiff's counsel, by ECF and in a prepaid postage envelope first-class mail, addressed to

LEE NUWESRA
60 East 42nd Street, Suite 838
New York, New York 10017,

that being the address that plaintiff's counsel designated for receipt of such material.

Dated: New York, New York
February 12, 2008

A handwritten signature in black ink, appearing to read 'Robert J. Anderson', written over a horizontal line.

ROBERT J. ANDERSON

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	
ELBA VEGA,	Plaintiff,
-against-	
THE CITY OF NEW YORK, <u>et al.</u> ,	Defendants.
ANSWER	
MICHAEL A. CARDOZO Corporation Counsel of the City of New York Attorney for Defendants 100 Church Street, Room 2-124 New York, New York 10007-2601 RAnderson@law.nyc.gov	
Of Counsel: Robert J. Anderson Tel No.: (212) 788-0860	
Case No.: 2007-040540	
<i>Due and timely service is hereby admitted.</i>	
Dated: New York, N.Y., 2008	
Attorney for	
Signed:	